IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 19318 to 19320 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARLAL CHHOTULAL PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR KB PUJARA for Petitioner(s) : 1,
MR DIPAN DESAI, Ld. AGP for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2, 4,
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 10/01/2006

COMMON ORAL JUDGMENT

1. Mr.Pujara, learned Counsel for the petitioners seeks leave to delete respondent No.4 as the action of

respondent No.4 is not challenged. Permission granted. **Rule.** Mr.Desai, learned AGP waives service of Rule for Respondents No.1 and 2 and Mr.Munshaw, learned Counsel waives service of Rule for Respondent No.3 and with the consent of both the sides matters are finally heard today.

2. In all the petitions common questions are involved and, therefore, they are being dealt with by this common order.

3. The petitioners have preferred these petition to quash and set aside the action of the respondent in denying the benefits of inter-district transfer to the petitioners from Dang District to Valsad on the ground that the petitioners concerned have availed the benefits of inter-district transfer in the past prior to the Government Resolutions dated 8.4.1999 and 4.6.2004. The petitioners have also prayed to declare that the benefit of inter-district transfer cannot be denied to the petitioners merely because in past as per the prevailing policy at that time the petitioners had opted for inter-district transfer.

4. Heard Mr.Pujara, learned Counsel for the petitioners, Mr.Desai, learned AGP for the State and Munshaw with Mr.Barot, learned Counsel for Respondent No.3.

5.Upon hearing the learned Counsel for both the sides, it appears that on factual aspects there is no dispute that the petitioners herein in past had taken benefit of inter-district transfer as per the policy prevailing then. The only aspect which deserves to be considered is the interpretation of the Government Resolution dated 4.6.2004, copy whereof is produced at Annexure “C” page 17, providing for the statutory instructions for transfers of primary teachers, which includes inter-district transfer.

6.Mr.Pujara, learned Counsel appearing for the petitioner submitted that as such the policy would apply perspectively and not retrospectively. He also submitted that in past such clarification was made during the period when the policy dated 8.4.1999 was in force and the clarification to that effect was made by the Director of Primary Education as per the Circular dated 22.9.1999, copy whereof is produced at Annexure B. He submitted that as per the petitioners in all other Districts except Valsad District, such an interpretation of having prospective effect is given, but Respondent No.3 is taking a different stand and has denied the benefit to the petitioners on the ground that earlier in past the petitioners have taken benefit

of inter-district transfer and, therefore, the petitioners are not entitled for the benefit again. Mr.Pujara, learned Counsel alternatively submitted that even otherwise also as per the instructions dated 4.6.2004, the clause denying the benefit more than once applies to only the teachers who have taken benefits of priority namely; widow, physically disabled or couple teachers etc., and it would not apply to other category for which no benefit of priority is taken. He, therefore, submitted that the action of the authority in denying benefit to the petitioners is not in consonance with the policy and, therefore, suitable directions be issued.

7. Mr.Desai, learned AGP as well as Mr.Barot, learned Counsel appearing for the State Government and the District Panchayat have supported the action. However, Mr.Desai submitted that the ban provided for taking of the benefit once cannot be made applicable to the teachers, who have taken benefits of priority, but it applies generally to all cases of inter-district transfer and, therefore, he submitted that even if the policy is made prospective, the petitioners may not be conferred benefit on the ground that such clause is applicable to only teachers who have enjoyed priority

or who have taken benefits on priority in inter-district transfer.

8. The perusal of the Government Resolution dated 4.6.2004, whereby the instructions are issued shows that the same is to apply for the transfers to be affected thereafter. The instructions are as such by Government Resolution and even if they are treated as statutory instructions, then also such would not be on higher pedestal than subordinate legislation. In a matter of subordinate legislation it is well settled that the same will have prospective effect and it would not have retrospective effect. Therefore, if the policy is to apply prospectively, then possibly the case of the petitioners cannot be denied on the ground that the petitioners had opted for inter-district transfer once on the basis of the policy prevailing then. It is not in dispute that the petitioners have not taken benefit of inter-district transfer after 4.6.2004 or on the basis of the instructions issued after 4.6.2004. Therefore, it can be said that those teachers who opted for inter-district transfer prior to 4.6.2004 are not excluded, on the basis of the policy vide instructions dated 4.6.2004.

9. However, such teachers who opted for inter-district

transfer earlier as per the policy prevailing then, would stand on a lower pedestal than those teachers who have not at all opted for inter-district transfer throughout their career. In a matter of transfer, it is well settled that they are generally in the domain of administration. The convenience of employee may be considered by the Administrative authorities in a matter of transfer and instructions may also be issued for such purpose, but the employee whose convenience is already considered once, would not be entitled to claim right at par with the employee whose convenience is not at all considered in past. The petitioners are the persons whose convenience is considered once and they have taken benefit of inter-district transfer as per the policy prevailing then. Therefore, even if the policy is to apply prospectively on reasonable construction of the policy and the instructions dated 4.6.2004, it appears that such petitioners cannot have right at par of inter-district transfer merely on the basis of length of service as against the teachers, who have not at all opted for inter-district transfer in past.

10. As observed earlier, in a matter of transfer, the convenience of the employee is to be considered by not

sacrificing the efficiency. It appears that one of the stipulations in the instructions dated 4.6.2004 is that the benefits is to be taken only once for the inter-district transfer. If such a clause is provided in the policy or instructions by the authority in a matter of transfer, it should apply jointly to all employees who are governed by the policy and there is no reasonable basis to restrict the applicability of such clause only to the teachers who have taken benefits of the priority. Even otherwise also the services of the primary teachers in the schools are under the control of the concerned District Panchayat and inter-district transfer is to result into other administrative consequences, including the alterations of the seniority etc., and, therefore, if the benefit of inter-district transfer is provided once only as per the instructions dated 4.6.2004, such cannot be said to be unreasonable or arbitrary.

11. In view of the above, the following directions deserve to be issued:

(a) It is hereby declared that the instructions dated 4.6.2004 Annexure “C” are to apply prospectively for inter-district transfer and the action of Respondent No.3 of denying the benefits

to the petitioners for inter-district transfer is declared as illegal.

(b) It is, however, clarified that the applicability of the instructions dated 4.6.2004 for inter-district transfer with prospective effect shall be with the clarifications that the applications of the teachers who have not at all taken benefit of inter-district transfer, shall be considered in priority in comparison to the teachers who have taken benefit of inter-district transfer as per the policy prevailing prior to 4.6.2004.

(c) It is also clarified that the benefit of the inter-district transfer as per the instructions dated 4.6.2004 would be available to the teachers once after the instructions dated 4.6.2004 have come into force.

(d) The respondent No.3 Authority shall consider the case of all teachers including the petitioners herein for inter-district transfer in light of the aforesaid observations and the directions given in this judgement subject to the availability of the vacancy at a place where the inter-district transfer is applied and subject to

the applicability of all other instructions vide Resolution dated 4.6.2004.

12. The petitions are partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

10.1.2006 **(Jayant Patel, J.)**

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